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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EPIC GAMES, INC.,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO. LTD;
SAMSUNG ELECTRONICS AMERICA, INC.; and
GOOGLE LLC,

Defendants.

Case No. 3:24-cv-06843-JD

**REPLY IN SUPPORT OF
DEFENDANT GOOGLE LLC'S
MOTION TO DISMISS THE
COMPLAINT**

Date: April 3, 2025

Time: 10:00 a.m.

Dept.: Courtroom 11, 19th Floor

Judge: Hon. James Donato

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INTRODUCTION

Plaintiff's core allegation underlying its claims in this case is that "the decision to turn Auto Blocker on by default was a coordinated decision by Google and Samsung to circumvent the injunction" in *Epic v. Google*. Compl. ¶ 101. According to Plaintiff, to plead that conspiracy it need not actually allege any additional details of the purported conspiracy, such as when this agreement took place, who from Google was allegedly involved, how the agreement was reached, or on what terms the agreement was made; it need not allege parallel conduct between Google and Samsung; and it need not even make a single factual allegation about Google's conduct during the relevant time period. But Plaintiff has cited no law holding that antitrust conspiracy pleading standards disappear whenever there are prior antitrust findings against a defendant. The law of this Circuit is the opposite. *In re DRAM Indirect Purchaser Antitrust Litig. (DRAM)*, 28 F.4th 42, 53-54 (9th Cir. 2022). Because Plaintiff has not pled factual allegations about the conspiracy it alleged in this case that are more consistent with an illegal agreement between Samsung and Google than with Samsung's unilateral, rational business decision, the complaint as to Google must be dismissed.

ARGUMENT

I. The Conspiracy Claim Should Be Dismissed.

18 Plaintiff concedes that it has not alleged direct evidence of an agreement and must therefore
19 allege circumstantial evidence instead. *See* Opp. 8-9. Circumstantial evidence must show “a
20 context that raises a suggestion of a preceding agreement.” *In re Musical Instruments & Equip.*
21 *Antitrust Litig.*, 798 F.3d 1186, 1194 (9th Cir. 2015). The Complaint fails to meet this standard
22 for three independent reasons.

A. Plaintiff Has Not Pled Any Factual Allegations Showing Google’s Participation in a Conspiracy.

Plaintiff has not pled any circumstantial evidence suggesting that Google participated in the alleged agreement that Plaintiff agrees is the basis for its complaint: “an agreement between [Google and Samsung] to prevent competition through Auto Blocker, now that Google itself is about to be enjoined.” Opp. 18; *see also* Compl. at 25 (“Google and Samsung have agreed to set

1 Auto Blocker to on by default.”). Absent from the complaint is any specific factual allegation
 2 concerning Google’s involvement in Samsung’s decision-making regarding Auto Blocker, much
 3 less any allegations to satisfy the “who, did what, to whom (or with whom), where, and when?”
 4 standard required by the Ninth Circuit. *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1048 (9th Cir.
 5 2008).¹ Of course, Plaintiff is not required to allege every detail of a conspiracy, but neither can
 6 Plaintiff proceed absent any factual boundaries.

7 Courts have dismissed complaints similarly lacking factual allegations that would suggest
 8 a defendant’s involvement in the particular conspiracy alleged. *Credit Bureau Servs., Inc. v.*
 9 *Experian Info. Sols., Inc.*, 2013 WL 3337676, at *8 (C.D. Cal. June 28, 2013) (“does not allege
 10 whether there were one or multiple agreements, the form those agreements took, who executed
 11 them, or when or where they were enacted”); *In re Calif. Bail Bond Antitrust Litig.*, 511 F. Supp.
 12 3d 1031, 1049 (N.D. Cal. 2021) (finding “no alternative authority upholding . . . allegations against
 13 defendants whose participation was not described in terms of communications and/or meetings
 14 with other defendants”); *In re Mexican Gov’t Bonds Antitrust Litig.*, 412 F. Supp. 3d 380, 388-89
 15 (S.D.N.Y. 2019). Plaintiff’s citation to *Markson v. CRST Int’l, Inc.*, 2019 WL 6354400 (C.D. Cal.
 16 Mar. 7, 2019), demonstrates precisely the kinds of facts Plaintiff fails to allege about any
 17 agreement relating to Auto Blocker. There, plaintiffs alleged “specifics” of their asserted no-poach
 18 conspiracy that demonstrated defendants’ involvement, including particular terms agreed to (the
 19 “did what”); communications used to convey the conspiracy, such as “letters to other trucking
 20 companies” (the “when” and “who”); and particular instances in which defendants refused to hire
 21 individual drivers pursuant to the conspiracy (the “to whom”). *Id.* at *3-4.

22 In response, Plaintiff urges that its complaint is nonetheless sufficient because the Court
 23 should infer Google’s participation in a conspiracy relating to Auto Blocker based wholly on a
 24 search revenue-sharing agreement (RSA) between Google and Samsung from 2020. Opp. 17
 25

26 ¹ Plaintiff contends that *Kendall* and cases applying *Kendall* are inapposite because no fact
 27 discovery has occurred in this case, *see* Opp. 8 n.3, but the Ninth Circuit has applied *Kendall’s*
 28 standard in motion-to-dismiss cases lacking any fact discovery. *E.g.*, *In re German Automotive Mfrs. Antitrust Litig.*, 2021 WL 4958987, at *1 & n.1 (9th Cir. Oct. 26, 2021); *see also Bay Area Surgical Mgmt. LLC v. Aetna Life Ins. Co.*, 166 F. Supp. 3d 988, 995 n.2 (N.D. Cal. 2015).

1 (citing Compl. ¶¶ 78-79). But “courts are not required to make unreasonable inferences or
 2 unwarranted deductions of fact to save a complaint from a motion to dismiss.” *Moss v. U.S. Secret*
 3 *Serv.*, 572 F.3d 962, 971 (9th Cir. 2009) (dismissing claim lacking specific allegations tying the
 4 named defendants to the challenged conduct). For example, courts do not “accept a chain of
 5 inferences that are unmoored from particularized allegations that demonstrate their basis.”
 6 *Ferraro Family Foundation, Inc. v. Corcept Therapeutics Inc.*, 501 F. Supp. 3d 735, 758 (N.D.
 7 Cal. 2020). Even assuming (as is required on a motion to dismiss) the truth of Plaintiff’s
 8 allegations about the 2020 RSA, Plaintiff has offered no specific facts to support the series of
 9 inferences required to infer a new, Auto Blocker-related agreement just from that past conduct.

10 First, Plaintiff offers no facts to support the inference that the existence of search revenues
 11 Samsung already negotiated and obtained a contractual right to in 2020 implies that Samsung
 12 received money in exchange for turning Auto Blocker on by default in 2024.² Nor does Plaintiff
 13 offer facts to support the attenuated inference that, based on Samsung’s alleged passive
 14 commitment not to compete with Google, *see* Compl. ¶ 78 (alleging agreement not to lower prices
 15 or enter into exclusive deals for store content), four years later Samsung agreed to take an
 16 affirmative act to protect Google’s monopoly by changing the default for Samsung’s own security
 17 feature. That inference is particularly unwarranted because there is no allegation that Google and
 18 Samsung’s conduct in 2020 had anything to do with sideloading, as Plaintiff alleges the Auto
 19 Blocker agreement does. *See* Compl. ¶¶ 78-79, 112, 117; Opp. 11-12 (2020 RSA related to alleged
 20 agreement to “not compete on store content” or “on pricing”). In short, Plaintiff asks the Court to
 21 infer that, because employees from Google and Samsung reached an allegedly anticompetitive
 22 agreement four years ago, Google and Samsung must have colluded about Auto Blocker in 2024,
 23 too. That is not the kind of unwarranted inference that the law permits absent factual support.

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27 ² In its opposition, Plaintiff asserts that the 2020 RSA “likely expired the very same month that
 28 Samsung set Auto Blocker ‘on’ by default in July 2024.” Opp. 15. That is not alleged in the
Complaint, so it is “irrelevant for Rule 12(b)(6) purposes.” *Schneider v. Calif. Dep’t of Corrs.*,
 151 F.3d 1194, 1197 n.1 (9th Cir. 1998).

1 **B. Plaintiff Has Not Pled Parallel Conduct Occurring “Around the Same
2 Time.”**

3 Plaintiff’s claim must be dismissed for a second reason—failure to allege cognizable
4 parallel conduct as is required under the law of this Circuit and other courts of appeal. MTD Br.
5 (citing cases); *City of Pontiac Police & Fire Ret. Sys. v. BNP Paribas Sec. Corp.*, 92 F.4th 381,
6 401 (2d Cir. 2024). In opposition, Plaintiff musters only a single out-of-circuit district court case
7 to argue that parallel conduct allegations are not required, Opp. 10, while ignoring a Ninth Circuit
8 case stating that “‘plus factors’ are relevant only if the complaint adequately alleges parallel
9 conduct among the defendants,” *Bona Fide Conglomerate, Inc. v. SourceAmerica*, 691 F. App’x
10 389, 390 (9th Cir. 2017).³ And even Plaintiff’s lone case observed that a Section 1 claim “is
11 seriously weakened, albeit not outright defeated, by the absence of evidence of parallel conduct.”
12 *Cason-Merenda v. Detroit Med. Ctr.*, 862 F. Supp. 2d 603, 640 (E.D. Mich. 2012).

13 Plaintiff argues in the alternative that it has sufficiently alleged parallel conduct because of
14 purported similarities between Google’s Unknown Sources flow and Auto Blocker. The Unknown
15 Sources flow is not parallel to Auto Blocker because Google adopted Unknown Sources “well
16 over a decade” before Samsung created Auto Blocker. Compl. ¶¶ 64, 91. Parallel conduct
17 allegations plausibly support a conspiracy only if the conduct is adopted “around the same time.”
18 *Musical Instruments*, 798 F.3d at 1193; see MTD Br. 7. Plaintiff’s own cited case hurts its
19 contention, as parallel conduct allegations were found plausible there because defendants adopted
20 parallel policies within one month of each other—a closeness in time that is absent here. *PLS.com,*
21 *LLC v. Nat’l Ass’n of Realtors*, 32 F.4th 824, 830 (9th Cir. 2022).

22 Plaintiff does not and cannot contend that Unknown Sources and Auto Blocker were
23 adopted “around the same time,” *Musical Instruments*, 798 F.3d at 1193, so instead argues that
24 “since 2024, at least one of Google and Samsung has employed a functionally identical” install

25
26 ³ Plaintiff also selectively quotes from *Musical Instruments* that parallel conduct “may constitute
27 circumstantial evidence of anticompetitive behavior.” Opp. 10. The case next states: “But mere
28 allegations of parallel conduct—even consciously parallel conduct—are insufficient to state a
claim.” *Musical Instruments*, 798 F.3d at 1193. The word “may” thus denotes that parallel
conduct is not enough to state a claim. Nowhere did *Musical Instruments* dispense with the parallel
conduct requirement.

1 flow, Opp. 10. But, as Plaintiff does not rebut, parallel conduct is not sufficiently alleged where
 2 defendants adopted policies far apart in time—regardless of whether “at least one of” the
 3 defendants was engaged in the conduct at the time of the alleged conspiracy. Opp. 10; *see Musical*
 4 *Instruments*, 798 F.3d at 1195-96 (no parallel conduct where ongoing policies adopted “over a
 5 period of several years”); *Park Irmat Drug Corp. v. Express Scripts Holding Co.*, 911 F.3d 505,
 6 516-17 (8th Cir. 2018) (terminations six months apart); *Gibson v. Cendyn Grp., LLC*, 2024 WL
 7 2060260, at *4 (D. Nev. May 8, 2024) (defendants began licensing the same pricing software “at
 8 different times over an approximately 10-year period”).

9 C. Plaintiff Has Not Alleged Cognizable Plus Factors.

10 Even had Plaintiff alleged Google’s active participation and parallel conduct, it would be
 11 required to plead additional plus factors that suggest conspiracy. MTD Br. 7. Importantly, the
 12 holistic analysis for plus factors does not permit aggregating any plus factor that is not cognizable
 13 on its own.⁴ *Id.* In other words, zero plus zero is still zero.⁵ Nor, as the Ninth Circuit has stated,
 14 does a holistic analysis mean that “a single plausible plus factor allegation that weakly tips in the
 15 plaintiffs’ favor” can save a conspiracy claim. *DRAM*, 28 F.4th at 53-54. Viewed individually
 16 and holistically, Plaintiff’s plus-factor allegations do not plausibly plead a conspiracy.

17 ***The Design of Auto Blocker Suggests an Independent, Rational Business Decision, Not***
 18 ***a Conspiracy.*** Auto Blocker’s default-on design is more consistent with Samsung’s unilateral,
 19 rational business conduct. MTD Br. 8-9. In opposition, Plaintiff urges that Auto Blocker was
 20 against Samsung’s self-interest because Samsung did not also block Google’s Play Store. Opp.
 21 12-13. As an initial matter, Plaintiff’s argument ignores the important business interest, user safety
 22 and security, that Samsung has stated is served by Auto Blocker, MTD Br. 8, summarily waving
 23 it off as “pretextual,” Opp. 16.⁶ Further, Plaintiff speculates that Samsung should have designed

24 ⁴ Contrary to Plaintiff’s insinuation, Opp. 9 n.4, Google accurately described how courts should
 25 evaluate plus-factor allegations. In its motion to dismiss, Google explicitly noted that plus factor
 26 allegations are considered “holistically.” MTD Br. 12 (citing *DRAM*).

27 ⁵ *In re Nat'l Football League's Sunday Ticket Antitrust Litig.*, 933 F.3d 1136, 1152 (9th Cir. 2019),
 28 cited by Plaintiff, is inapposite to the plus factor analysis. That case considered a different
 question: whether anticompetitive effects of different agreements can be aggregated. *Id.*

29 ⁶ Google properly cites to Samsung announcements explaining the security benefits of Auto

1 Auto Blocker to block users from downloading from the Play Store even though the Play Store
 2 “attracts a large number of participating app developers and users,” Compl. ¶ 53. Most
 3 importantly, Plaintiff’s argument falls far short of the high bar—acknowledged nowhere in its
 4 opposition—for finding an action to be so against a defendant’s self-interest that it supports a
 5 conspiracy. “More extreme action against self-interest” “may suggest prior agreement” if
 6 “individual action would be so perilous in the absence of advance agreement that no reasonable
 7 firm would make the challenged move without such an agreement.” *Musical Instruments*, 798
 8 F.3d at 1195 (emphasis added). Plaintiff has identified no reason why turning Auto Blocker, which
 9 does not block Samsung’s own Galaxy Store, on by default is “perilous” absent agreement. Even
 10 a more straightforwardly “perilous” decision like making unilateral supply cuts does not
 11 necessarily support a conspiracy claim. *DRAM*, 28 F.4th at 49-51.

12 Plaintiff also contends that Auto Blocker was against Samsung’s self-interest because
 13 Samsung could hypothetically have made even more money if it blocked the Play Store, Opp. 12-
 14 13, or chose to enable other competitor stores, Opp. 16. Again, Plaintiff ignores Samsung’s
 15 legitimate interest in competing on grounds such as safety and security. “Courts have recognized
 16 that firms must have broad discretion to make decisions based on their judgments of what is best
 17 for them and that business judgments should not be second-guessed.” *In re Citric Acid Litig.*, 191
 18 F.3d 1090, 1101 (9th Cir. 1999); *see also Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 229 (3d
 19 Cir. 2011) (applying similar reasoning to dismiss complaint); *Williamson Oil Co., Inc. v. Philip*
 20 *Morris USA*, 346 F.3d 1287, 1310 (11th Cir. 2003) (“We must exercise prudence in labeling a
 21 given action as being contrary to the actor’s economic interests.”); *Kleen Prods. LLC v. Int’l*
 22 *Paper*, 276 F. Supp. 3d 811, 828 (N.D. Ill. 2017) (“Defendants may choose not to chase after every
 23 business opportunity.”). Plaintiff’s conjecture about how Samsung could have better run its
 24 business or better designed Auto Blocker does not suggest a conspiracy.

25
 26
 27 Blocker that incorporated by reference into the complaint in order to “prevent[] plaintiffs from
 28 selecting only” helpful “portions of documents.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d
 988, 1002 (9th Cir. 2018).

1 Plaintiff also urges that the default-on change to Auto Blocker in July 2024 was “an abrupt
 2 and unexplained” departure from 15 years of prior conduct.⁷ Opp. 16. As demonstrated by
 3 Plaintiff’s cited case, a “shift in behavior” is relevant to whether parallel conduct is alleged; it is
 4 not a separate plus factor. *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 428 (4th Cir.
 5 2015). Without more, changes from prior conduct may be “just as consistent with innocent
 6 behavior as with unlawful behavior.” *Jones v. Micron Tech. Inc.*, 400 F. Supp. 3d 897, 920 (N.D.
 7 Cal. 2019). Moreover, Google explained why the switch to default-on is more consistent with
 8 unilateral behavior than concerted action. MTD Br. 8-9; *see also* Samsung MTD Br. 7-12.

9 ***Plaintiff’s Allegations about Google and Samsung’s Relationship Are Insufficient to***
 10 ***Suggest a Conspiracy.*** Plaintiff argues that Google and Samsung share a motive “to maximize
 11 profits through anticompetitive means” because of a separate 2020 RSA regarding search
 12 revenues. Opp. 11. The Ninth Circuit has “rejected common motive as a plus factor to show an
 13 agreement.” *Moore v. Mars Petcare US, Inc.*, 820 F. App’x 573, 575-76 (9th Cir. 2020).⁸ Further,
 14 revenue-sharing agreements are common business arrangements that do not, “standing alone, tend
 15 to show anticompetitive collusion.” *In re Sulfuric Acid Antitrust Litig.*, 743 F. Supp. 2d 827, 858
 16 n.9 (N.D. Ill. 2010); *see also In re Suboxone Antitrust Litig.*, 636 F. Supp. 3d 539, 556-63 (E.D.
 17 Pa. 2022) (“revenue share” between defendants not suggestive of conspiracy).

18 Plaintiff also relies on a handful of communications between Google and Samsung from
 19 2020 and before to argue that Google and Samsung have “extraordinary” communications that are
 20 “probative” of the Auto Blocker conspiracy. Opp. 14-15. But none of those communications were
 21

22 ⁷ Plaintiff’s attempt to now avoid inconsistencies in its timing allegations by generalizing them to
 23 an ambiguous “looming remedy,” Opp. 16 n.5, demonstrates the dangers of the *post hoc ergo*
propter hoc fallacy Plaintiff relies on. Courts reject the fallacy because it assumes causation based
 24 on coincidences in timing, which can be framed to support any argument. *See* MTD Br. at 10;
Husky v. City of San Jose, 204 F.3d 893, 899 (9th Cir. 2000).

25 ⁸ To instead argue that “a motive to maximize profits through anticompetitive means suggests a
 26 conspiracy,” Plaintiff cites to much older Ninth Circuit precedent that—even if it were still good
 27 law—is inapposite. *City of Long Beach v. Standard Oil Co. of California* held that “substantial
 28 incentives to conspire” could “support at least an inference of an agreement” where market
 structure and circumstances made cooperation a “necessity.” 872 F.2d 1401, 1407 (9th Cir. 1989).
 Plaintiff does not allege that cooperation is a “necessity” for Google or for Samsung.

1 about Auto Blocker, linked to Auto Blocker, concerning sideloading, or even from the time period
 2 during which Auto Blocker has existed. As shown by Plaintiff's cited cases, even "atypical"
 3 communications are a cognizable plus factor only when they are made during the relevant time
 4 period and are plausibly related to the alleged conspiracy.⁹ *See Flextronics Int'l USA, Inc. v.*
 5 *Panasonic Holdings Corp.*, 2023 WL 4677017, at *2 (9th Cir. July 21, 2023) (communications
 6 about need to hide conspiracy at issue); *In re Flash Memory Antitrust Litig.*, 643 F. Supp. 2d 1133,
 7 1142-44, 1148 (N.D. Cal. 2009) ("specific instances" of meetings after which "output was
 8 reduced"); *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 481 (9th Cir. 2021)
 9 (emails suggesting means to carry out conspiracy).

10 Plaintiff puts forward a new plus factor that the "concentration of the Android App
 11 Distribution Market makes it especially ripe for collusive abuse." Opp. 16-17. This allegation
 12 was not in Plaintiff's complaint and is therefore "irrelevant for Rule 12(b)(6) purposes."
 13 *Schneider*, 151 F.3d at 1197 n.1. Regardless, market concentration does not support the existence
 14 of a conspiracy because "allegations concerning market characteristics" are "just as likely to be
 15 consistent with innocent as unlawful behavior." *Jones*, 400 F. Supp. 3d at 917; *see also DRAM*,
 16 28 F.4th at 52 ("DRAM market's structure" alone insufficient to plausibly suggest conspiracy);
 17 *Prosterman v. Am. Airlines, Inc.*, 747 F. App'x 458, 461 (9th Cir. 2018) (rejecting plus factors that
 18 merely "restate[d]" factors "endemic to an oligopoly").

19 **"History of Anticompetitive Collusion" Is Not Enough to Suggest a Conspiracy.** The
 20 support for Plaintiff's conspiracy allegation comes down to one thing: Plaintiff's characterization
 21 that Google and Samsung previously had "anticompetitive understandings."¹⁰ Opp. 13-14. Even

22 ⁹ The "consisten[cy]" of communications between Google and Samsung also does not suggest
 23 conspiracy. Opp. 15. Repeated contacts or a close relationship between partners, even if they are
 24 also competitors, is neither atypical nor suggestive of illicit agreement. *See In re Dairy Farmers*
of Am., Inc. Cheese Antitrust Litig., 60 F. Supp. 3d 914, 951 (N.D. Ill. 2014) ("Having repeated
 25 communications with a supplier, who also is a competitor in certain markets, does not a conspirator
 26 make."), *aff'd*, 801 F.3d 758 (7th Cir. 2015); *Anderson News LLC v. Am. Media, Inc.*, 123 F. Supp.
 3d 478, 504 (S.D.N.Y. 2015) (communications "were necessary for Defendants" to "conduct their
 day-to-day business"), *aff'd*, 899 F.3d 87 (2d Cir. 2018).

27 ¹⁰ Google disagrees with Plaintiff's characterizations about the *Epic* jury's findings regarding past
 28 agreements, *see* Opp. 25. The *Epic v. Google* jury returned a verdict finding that at least one,
 unspecified agreement between Google and any OEM violated Section 1, not any verdict specific

1 assuming the truth of Plaintiff's allegations as is required on a motion to dismiss, Plaintiff offers
 2 no response to Ninth Circuit precedent that past conduct alone is not enough to plausibly support
 3 a new conspiracy. *See* MTD Br. 11-12. Plaintiff cites *DRAM* to argue historical conduct can be
 4 "probative," Opp. 14, yet ignores that the allegations in *DRAM* were dismissed in spite of "the
 5 factual overlap between Defendants' prior criminal conduct and the present allegations." 28 F.4th
 6 at 53. Plaintiff's argument mirrors one made and rejected in *DRAM*: just because a prior history
 7 may involve "the same offending companies, the same market, the same product, and some of the
 8 same executives" does not mean a new alleged conspiracy survives. Reply Br. at 27, *DRAM*, 28
 9 F.4th 42 (No. 21-15125), 2021 WL 4692865, at *27; *DRAM*, 28 F.4th at 53-54; *see also Flash*,
 10 643 F. Supp. 2d at 1149-50 (Plaintiff's cited case stating that a past conspiracy "may not prove the
 11 existence of a conspiracy with respect to" a newly alleged agreement absent additional factual
 12 support). So too here. Because Plaintiff's other plus factors do not suggest a conspiracy, historical
 13 allegations cannot salvage the conspiracy claim.

14 Plaintiff's Section 1 claim must therefore be dismissed. *DRAM*, 28 F.4th at 54.

15 **II. The Remaining Claims Against Google Should Be Dismissed.**

16 Plaintiff's group boycott claim fails to plead the existence of an agreement or a group
 17 boycott. MTD Br. 12-13. Plaintiff argues that its group boycott claim survives because it is
 18 sufficient to allege that Samsung boycotted app stores, thus conceding Plaintiff is alleging a
 19 boycott by one firm. Opp. 20. But a group boycott claim cannot be premised on a "boycott" of
 20 competitors by a single firm. *City of Oakland v. Oakland Raiders*, 20 F.4th 441, 453-54 (9th Cir.
 21 2021) ("Collective action taken in support of an individual boycott is not the same as a group
 22 boycott."). Group boycott cases require that "multiple producers refuse[] to sell their goods or
 23 services to consumers." *Id.* at 454 (emphasis in original). Ignoring this precedent, Plaintiff cites
 24 a single 1959 Supreme Court case that offers no support for its position, as multiple defendants
 25 actually boycotted the plaintiff. *Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 209
 26 (1959) ("manufacturers and distributors of such well-known brands as General Electric, RCA,
 27

28 _____
 to agreements between Google and Samsung. Verdict Form, *Epic v. Google* (No. 3:20-cv-5671-JD), Dkt. 606.

1 Admiral, Zenith, Emerson” refused to distribute products to plaintiff-retailer). And *Klor’s*
 2 recognized that “a case of a single trader refusing to deal with another”—all that Plaintiff alleges
 3 here—is not a cognizable group boycott. *Id.* at 212.

4 Plaintiff’s conspiracy to monopolize claim fails to plead a conspiracy or that Google
 5 possessed specific intent to monopolize. MTD Br. 13-14. The complaint does not contain—and
 6 Plaintiff has not identified in its opposition—a single non-conclusory allegation suggesting that,
 7 whenever the purported Auto Blocker conspiracy was formed, Google had the specific intent to
 8 monopolize the alleged app distribution market. Plaintiff falls back on an anticompetitive effects
 9 allegation that has nothing to do with intent, Compl. ¶ 124; a recitation of the legal standard for
 10 specific intent, Compl. ¶ 150; and the false and unpled assertion that “Google has already been
 11 found to possess specific intent given that it was found liable for monopoly maintenance in *Epic*
 12 v. *Google*,“ Opp. 19. The monopolization claim in *Epic* required only a finding of general, not
 13 specific, intent. *Tops Mkts., Inc. v. Quality Mkts., Inc.*, 142 F.3d 90, 101 (2d Cir. 1998) (quoting
 14 *Times-Picayune Publ’g Co. v. United States*, 345 U.S. 594, 626 (1953)). The *Epic* jury was not
 15 instructed on specific intent and could not have made a specific intent finding. Jury Instructions,
 16 *Epic v. Google* (No. 3:20-cv-5671-JD), Dkt. 592.

17 Finally, Plaintiff’s state-law Cartwright Act and UCL claims rise and fall with Plaintiff’s
 18 Sherman Act claims. MTD Br. 14-15. As Plaintiff admits in its opposition, its allegation that
 19 Google violated the “unfair” prong of the UCL also collapses into its federal antitrust claim. Opp.
 20 25 (arguing as to unfair prong that “Defendant’s conduct violates the policy or spirit of the antitrust
 21 laws by harming competition for that product”).

22 CONCLUSION

23 For the foregoing reasons, Google respectfully requests the Court dismiss Plaintiff’s claims
 24 against Google.

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2 Respectfully submitted,

3 /s/ Jeannie S. Rhee

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